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10 Attorneys for Plaintiff,
11 Exhart Environmental Systems, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 EXHART ENVIRONMENTAL
15 SYSTEMS, INC., a California
16 corporation,

17 Plaintiff,

18 vs.

19 RITE AID CORPORATION, a
20 Delaware corporation

21 Defendant.

Case No.

COMPLAINT FOR:

- (1) **TRADE DRESS INFRINGEMENT**
(2) **DESIGN PATENT INFRINGEMENT**
(3) **COPYRIGHT INFRINGEMENT**
(4) **UNFAIR COMPETITION**
(5) **BREACH OF SETTLEMENT AGREEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Exhart Environmental Systems, Inc. ("Exhart") hereby alleges as
2 follows:

3 4 JURISDICTION AND VENUE

5 1. This is an action for trade dress infringement, design patent
6 infringement, copyright infringement, unfair competition and breach of settlement
7 agreement under federal and state law against Defendant Rite Aid Corporation.
8 ("Rite Aid"). Plaintiff Exhart seeks injunctive relief, money damages, as well as
9 attorneys' fees and costs of suit, against Rite Aid for its continued unauthorized
10 use of Exhart's proprietary trade dress and patented and copyrighted designs.

11
12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
13 1331, 1338(a) and 1338(b), and pursuant to 15 U.S.C. §§ 1114(1) and 1125, as
14 the trade dress claims arise under the Federal Trademark Act ("The Lanham
15 Act") of July 5, 1946, as amended, 15 U.S.C. §§ 1051 *et seq.*; the patent claims
16 arise under the federal patent laws, 35 U.S.C. §1, *et seq.*; and, the copyright
17 claims arise under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

18
19 3. This Court has supplemental jurisdiction over the related state law
20 claims pursuant to 28 U.S.C. § 1367.

21
22 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 28
23 U.S.C. §§ 1391(b), 1391(c), and 1400, as Defendant Rite Aid is subject to
24 personal jurisdiction in this district because Rite Aid routinely conducts business
25 in this judicial district, and because Rite Aid has committed acts of infringement
26 in this judicial district.

1 **PARTIES**

2 5. Plaintiff Exhart is a California corporation having its principal place
3 of business at 20364 Plummer Street, Chatsworth, California 91311. Exhart
4 designs, develops and sells unique garden décor and novelty items, including its
5 WINDY WINGS butterfly garden stakes.

6
7 6. Defendant Rite Aid is a Delaware corporation, having a place of
8 business at 30 Hunter Lane, Camp Hill, PA 17011. Among other products, Rite
9 Aid sells Rite Aid branded decorative butterfly yard stakes in competition with
10 Plaintiff. Examples of the accused products are depicted in Exhibit 1 attached to
11 this Complaint.

12
13 7. The defendants named herein as Does 1 through 9, inclusive are
14 unknown to Plaintiff Exhart, who therefore sues such “Doe” defendants by such
15 fictitious names. Exhart is informed, believes and thereon alleges that each
16 fictitiously named “Doe” defendant is in some manner, means or degree
17 responsible for the events and happenings herein alleged. Exhart will amend this
18 complaint to assert the true names and capacities of the fictitiously designated
19 “Doe” defendants when the same have been ascertained.

20
21 8. Plaintiff Exhart is informed and believes and thereon alleges that
22 Defendant Rite Aid and Does 1 through 9 advertise, sell, or manufacture and sell,
23 products which infringe Exhart’s trade dress in its WINDY WINGS butterfly
24 garden stakes, as well as infringe certain of Exhart’s patents and copyrights in
25 violation of federal trademark, patent and copyright laws.

26
27 9. Plaintiff Exhart is informed and believes, and thereon alleges, that in
28 performing the abovementioned acts Defendant Rite Aid, and Does 1 through 9,

1 inclusive, and each of them, were the actual, implied or ostensible agents,
 2 servants, employees, partners, joint venturers, alter egos and/or co-conspirators
 3 of one another, and were at all relevant times described herein acting on behalf of
 4 one another within the course and scope of such agency, servitude, employment,
 5 partnership, joint venture, alter ego relationship and/or conspiracy. Plaintiff is
 6 further informed and believes, and thereon alleges, that each defendant, whether
 7 expressly or fictitiously named, committed the acts or omissions described herein
 8 with the full knowledge, consent, authority and/or ratification of some or all of
 9 the other defendants.

10 FACTS COMMON TO ALL CLAIMS

11
 12
 13 10. Plaintiff Exhart, a California corporation with a principal place of
 14 business in this judicial district, provides novelty home and garden decor. Exhart
 15 was founded in 1987 with the introduction of a variety of home and garden
 16 novelty products. At least as early as 2002, Exhart introduced its WINDY
 17 WINGS line of eye-catching butterfly garden stakes, which are at issue in this
 18 litigation.

19
 20 11. Plaintiff Exhart owns numerous design patents, utility patents,
 21 trademarks, and copyrights for its many products including its WINDY WINGS
 22 butterfly garden stakes.

23
 24 12. Plaintiff Exhart sells its eye-catching WINDY WINGS butterfly
 25 garden stakes via numerous retailers nationwide including Home Depot, Sears and
 26 Amazon.com, among many others.

1 13. As a result of its extensive sales and advertising, Plaintiff Exhart has
2 developed trade dress rights in the butterfly designs of its WINDY WINGS
3 garden stakes.

4
5 14. Plaintiff Exhart's trade dress in its WINDY WINGS butterfly designs
6 includes the brightly colored wings with a black border flowing from the wingtips
7 downwardly along the trailing edges of the wings, wherein the black border
8 includes a pattern of white spots of irregular dimensions, and wherein black
9 filament lines extend from the black border across the brightly colored wings, and
10 wherein the body of each design features forward facing antennae.

11
12 15. Plaintiff Exhart's WINDY WINGS butterfly trade dress is well-
13 known among consumers and retailers of garden products as coming from a well-
14 respected company that has been selling the butterfly garden stakes for
15 approximately 15 years. The WINDY WINGS butterfly trade dress is a valuable
16 asset of substantial and inestimable worth to Plaintiff. Photographs of products
17 embodying Exhart's trade dress are appended hereto as Exhibit 2.

18
19 16. Due to the popularity of Plaintiff Exhart's WINDY WINGS butterfly
20 garden stakes, numerous entities have attempted to copy the WINDY WINGS
21 trade dress necessitating that Exhart frequently engage in actions to enforce its
22 intellectual property rights.

23
24 17. One such entity that has previously copied Exhart's WINDY WINGS
25 butterfly garden stakes is the Defendant in this action, Rite Aid. In 2013,
26 Defendant Rite Aid began selling Rite Aid branded butterfly yard stakes which
27 were close copies of Exhart's WINDY WINGS butterfly garden stakes. Exhart
28 objected and sent Rite Aid a cease and desist letter asserting that Rite Aid's

1 butterfly yard stakes infringed certain of Exhart's patents and copyrights. The
2 parties settled their dispute shortly thereafter without the need for legal action. A
3 true and correct copy of the parties' 2013 Settlement Agreement ("the
4 Agreement") is appended hereto as Exhibit 3.

5
6 18. On or about March of 2017, Plaintiff Exhart discovered that
7 Defendant Rite Aid had introduced a new line of butterfly yard stakes and formed
8 a belief that Rite Aid's new goods infringe Exhart's WINDY WINGS butterfly
9 trade dress. Rite Aid continues to make, advertise, distribute, import, offer for
10 sale, or sell such infringing goods.

11
12 19. Exhart's WINDY WINGS butterfly designs are further protected by
13 United States Patent No. D464,685 (the '685 Patent) entitled "Novelty butterfly,"
14 which the United States Patent and Trademark Office (USPTO) duly issued on
15 October 22, 2002. This patent is valid, unexpired, and fully enforceable. Exhart
16 is the owner of the '685 Patent via an assignment recorded with the USPTO on or
17 about December 7, 2001. A true and correct copy of the '685 Patent is attached
18 to this Complaint as Exhibit 4.

19
20 20. Beginning at least as early as March of 2017, Defendant Rite Aid
21 has, without Plaintiff Exhart's permission, again begun making, using,
22 advertising, distributing, importing, offering for sale, and/or selling goods that
23 fall within the scope of the claim in Exhart's '685 Patent. Rite Aid continues to
24 make, advertise, distribute, import, offer for sale, or sell such goods. Some of
25 the accused products shown in Exhibit 1 fall within the scope of the claim of the
26 '685 Patent.

21. Exhart is also the owner of United States Copyright Registration No. VA 1-121-225 (“the ‘225 registration”) for the work titled “Windy Wings Butterfly.” A true and correct copy of this copyright registration is attached to this Complaint as Exhibit 5.

22. Beginning at least as early as March of 2017, and without Plaintiff Exhart’s permission, Defendant Rite Aid has advertised, marketed, distributed, put on public display, offered for sale and/or sold substantially similar copies of Exhart’s copyright protected works. Some of the accused products shown in Exhibit 1 are substantially similar to the work protected by the ‘225 registration.

FIRST CAUSE OF ACTION (For Trade Dress Infringement)

23. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 22 above.

24. This claim arises under under the Federal Trademark Act (“The Lanham Act”) of July 5, 1946, as amended, 15 U.S.C. §§ 1051 *et seq.*

25. Plaintiff Exhart owns trade dress rights in its WINDY WINGS butterfly designs.

26. Plaintiff Exhart’s trade dress in its WINDY WINGS butterfly designs includes at least the following: the brightly colored wings with a black border flowing from the wingtips downwardly along the trailing edges of the wings, wherein the black border includes a pattern of white spots of irregular dimensions, and wherein black filament lines extend from the black border across

1 the brightly colored wings, and wherein the body of each design features forward
2 facing curved antennae.

3
4 27. Plaintiff Exhart's WINDY WINGS trade dress is nonfunctional
5 because the trade dress does not yield any utilitarian advantage inasmuch as the
6 bright colors, black border, pattern of white spots of irregular dimensions, black
7 filament lines and forward facing antennae are ornamental and not utilitarian.
8 Moreover, many alternative butterfly designs are available.

9
10 28. Plaintiff Exhart's advertising for its WINDY WINGS butterfly
11 garden stakes does not tout any utilitarian features for the butterfly designs, but
12 rather depicts the colorful ornamental features of the designs.

13
14 29. Plaintiff Exhart's WINDY WINGS trade dress has acquired
15 secondary meaning because Exhart is the originator of the unique WINDY
16 WINGS butterfly designs and has been advertising and selling the WINDY
17 WINGS butterfly garden stakes which embody the designs since at least
18 December of 2001 as a unique and original creation of Exhart. As such, the
19 consuming public has come to associate Exhart's WINDY WINGS butterfly
20 garden stakes embodying the WINDY WINGS trade dress as coming from a
21 single source.

22
23 30. On or about March of 2017, Plaintiff Exhart learned that Defendant
24 Rite Aid had reintroduced to the market new versions of Rite Aid's butterfly yard
25 stakes. Rite Aid's new butterfly yard stakes use a trade dress substantially similar
26 in visual appearance to Exhart's WINDY WINGS butterfly trade dress.

1 31. The 2017 versions of Defendant Rite Aid's butterfly yard stakes
2 appear substantially the same as Plaintiff Exhart's WINDY WINGS butterfly
3 garden stakes and associated trade dress, and given such attention as consumers of
4 relatively low cost products are likely to give, are essentially indistinguishable and
5 therein will create and are creating a substantial likelihood of consumer confusion.

6
7 32. Defendant Rite Aid's public display, advertising, promoting, offering
8 for sale, and selling of its butterfly yard stakes, therefore, constitutes infringement
9 of Plaintiff Exhart's WINDY WINGS butterfly trade dress.

10
11 33. Defendant Rite Aid's unauthorized use of Plaintiff Exhart's WINDY
12 WINGS trade dress, or colorable imitations thereof, or confusingly similar trade
13 dress, to promote and sell butterfly yard stakes in commerce is likely to cause
14 confusion and mistake and to deceive consumers as to the source or origin of Rite
15 Aid's products, and upon information and belief has caused actual consumer
16 confusion in the marketplace.

17
18 34. The acts of Defendant Rite Aid as described above infringe Plaintiff
19 Exhart's trade dress rights, with consequent damages to Exhart's business
20 reputation and to the goodwill symbolized by the WINDY WINGS butterfly trade
21 dress in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

22
23 35. Defendant Rite Aid's willful acts of trade dress infringement are
24 likely to cause, and upon information and belief have caused and are causing,
25 great and irreparable injury to Plaintiff Exhart and its trade dress and to the
26 business goodwill represented thereby. Unless Rite Aid is restrained, Exhart will
27 have no adequate remedy at law that will compensate for the continued and
28 irreparable harm it will suffer if Rite Aid's acts are allowed to continue.

1
2 36. As a direct result of Defendant Rite Aid's willful conduct, Plaintiff
3 Exhart has suffered injury to its reputation and business goodwill. Consequently,
4 Exhart seeks injunctive relief, an award of money damages for past infringement,
5 and its attorneys' fees and costs of suit.

6
7 **SECOND CAUSE OF ACTION**
8 **(For Design Patent Infringement)**

9 37. Plaintiff repeats and incorporates the allegations set forth in
10 paragraphs 1 through 36 above.

11
12 38. This claim arises under the federal patent laws, 35 U.S.C. §1, *et seq.*

13
14 39. Plaintiff Exhart has marketed and continues to market novelty items
15 in accord with the claim of the '685 Patent. Each of those novelty items identify
16 the item as being patented by providing an appropriate patent notice.

17
18 40. Defendant Rite Aid has infringed and is infringing the '685 Patent in
19 this District and elsewhere throughout the United States by manufacturing, using,
20 importing, distributing, marketing, advertising, offering for sale, and/or selling
21 novelty items including, but not limited to, the accused products, and perhaps
22 other novelty items that may be ascertained through discovery, in violation of the
23 claim of the '685 Patent.

24
25 41. Defendant Rite Aid has willfully, wantonly, and deliberately
26 infringed the '685 Patent by manufacturing, using, importing, distributing,
27 marketing, advertising, offering for sale, and/or selling the accused products in
28

1 known and objectively reckless disregard for Plaintiff Exhart's rights in the '685
2 Patent.

3
4 42. Defendant Rite Aid's infringement has injured Plaintiff Exhart, and
5 Exhart is entitled to recover damages adequate to compensate it for the
6 infringement, but in no event less than a reasonable royalty. In addition, Exhart
7 is entitled to Rite Aid's total profits from the infringement.

8
9 43. The amount of money damages that Plaintiff Exhart has suffered due
10 to Defendant Rite Aid's acts of infringement cannot be determined without an
11 accounting, and thus are subject to proof at trial. Exhart is entitled to a complete
12 accounting of all revenue derived by Rite Aid from the unlawful conduct alleged
13 in this complaint.

14
15 44. Unless enjoined by this Court, Defendant Rite Aid will continue its
16 acts of infringement to Plaintiff Exhart's great and irreparable damage.
17 Furthermore, unless enjoined, Rite Aid's acts of manufacturing, using, importing,
18 distributing, marketing, advertising, offering for sale, and/or selling the Accused
19 Products will likely cause Exhart irreparable harm for which Exhart has no
20 adequate remedy at law, and which can only be remedied by injunctive relief.

21
22 **THIRD CAUSE OF ACTION**
23 **(For Copyright Infringement)**

24 45. Plaintiff repeats and incorporates the allegations set forth in
25 paragraphs 1 through 44 above.

26
27 46. This claim arises under the Copyright Act of 1976, 17 U.S.C. § 101
28 et seq.

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1
2 47. Plaintiff Exhart is the owner of United States Copyright Registration
3 VA 1-121-225 entitled "Windy Wings - Butterfly."

4
5 48. Plaintiff Exhart has at all times complied in all respects with the
6 Copyright Act of 1976 and all other laws of the United States with regard to this
7 work.

8
9 49. Defendant Rite Aid had access to Plaintiff Exhart's proprietary work
10 by virtue of Exhart's extensive advertising and display of its products.

11
12 50. Defendant Rite Aid used, or caused to be used, various copies
13 constituting unauthorized copies of the work in violation of Plaintiff Exhart's
14 exclusive rights under the Copyright Act of 1976, 17 U.S.C. § 106.

15
16 51. Defendant Rite Aid's advertising, marketing, distribution, public
17 display, offering for sale and/or sales of substantially similar copies of the work
18 constitute copyright infringement in violation of Plaintiff Exhart's exclusive rights
19 under the Copyright Act of 1976, 17 U.S.C. § 101 et seq.

20
21 52. Defendant Rite Aid knowingly, willfully, and/or deliberately
22 infringed, and/or acted in reckless disregard in infringing, Plaintiff Exhart's
23 copyrights in the work, and continue to do so in intentional and/or reckless
24 disregard and violation of Exhart's exclusive rights.

25
26 53. By reason of Defendant Rite Aid's acts of copyright infringement,
27 Plaintiff Exhart suffered and will continue to suffer irreparable injury unless and
28

1 until this Court (a) enters an order enjoining and restraining Rite Aid from using
 2 the works in any manner, and (b) orders all the copied works to be impounded.

3
 4 54. Defendant Rite Aid's continuing acts of copyright infringement,
 5 unless enjoined, will cause and have caused irreparable damage to Plaintiff Exhart
 6 in that it will have no adequate remedy at law to compel Rite Aid to cease such
 7 acts. Exhart will be compelled to prosecute a multiplicity of actions, one action
 8 each time Rite Aid commits such acts, and in each such action it will be extremely
 9 difficult to ascertain the amount of compensation which will afford Exhart
 10 adequate relief.

11
 12 55. By reason of Defendant Rite Aid's acts of copyright infringement,
 13 Plaintiff Exhart is entitled to recover all profits received or otherwise achieved,
 14 directly or indirectly, by Rite Aid in connection with their copying, advertising,
 15 distributing, and/or selling of the Accused Products which are substantially
 16 similar copies of Exhart's protected works, as well as any other acts of Rite Aid
 17 that violate 17 U.S.C. § 106. In the alternative, Exhart is entitled to an award of
 18 statutory damages of up to \$150,000 as provided for in 17 U.S.C. § 504(c).

19 20 **FOURTH CAUSE OF ACTION**

21 **(For Common Law Trade Dress Infringement and Unfair Competition Under**
 22 **California's Cal. Bus. & Prof. Code §§ 17200 and 17203)**

23
 24 56. Plaintiff Exhart realleges and incorporates paragraphs 1 through 55
 25 as though fully set forth herein.

26
 27 57. Plaintiff Exhart owns and uses the WINDY WINGS butterfly trade
 28 dress in California and throughout the United States. As such, Exhart enjoys

1 common law rights in the trade dress in California and throughout the United
2 States in connection with the all of the goods and services marketed under the
3 trade dress.

4
5 58. Defendant Rite Aid's use of Plaintiff Exhart's trade dress in
6 commerce in connection with the sale of butterfly yard stakes is intentionally
7 designed to cause confusion regarding the source of Exhart's products and/or
8 whether an affiliation exists between Exhart and Rite Aid.

9
10 59. Defendant Rite Aid's acts constitute common law trade dress
11 infringement and unfair competition in violation of the California Business and
12 Professions Code §§ 17200 and 17203.

13
14 60. Plaintiff Exhart is informed and believes that the acts of unfair
15 competition undertaken by Defendant Rite Aid were intentionally and knowingly
16 undertaken with the express intent of trading on the goodwill associated with
17 Exhart's trademarks and were done with a willful disregard for the rights of
18 Exhart.

19
20 61. As a direct result of Defendant Rite Aid's acts of unfair competition,
21 Plaintiff Exhart has suffered and will continue to suffer irreparable injury unless
22 and until this Court enters an order enjoining Rite Aid from any further acts of
23 unfair competition.

24
25 62. In doing the acts alleged, Defendant Rite Aid acted willfully,
26 fraudulently, oppressively, and maliciously, and, as such, Plaintiff Exhart is
27 entitled to an injunction against further trade dress infringement by Rite Aid.
28

FIFTH CAUSE OF ACTION

(For Breach of the Agreement, as against Rite Aid and Does 1-9)

63. Plaintiff Exhart hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 to 62.

64. The July 16, 2013 Agreement constitutes a contract by and between Plaintiff Exhart and Defendant Rite Aid, wherein Rite Aid agreed not to “advertise, publicly display, make, have made, distribute, use, sell or offer to sell in the United States, or import into the United States,” any goods within the scope of the claims of Exhart’s U.S. Patents Nos. 6,599,160; D464,685; and D492,220 (“the Exhart Patents”), or that were substantially similar to the designs protected by U.S. Copyright Registration VA 1-121-225 (“the ‘225 Registration”). (Exh. 3, Agreement, ¶1(a), appended hereto.) In exchange, Exhart agreed to not to bring suit against Rite Aid for its acts of patent and copyright infringement.

65. Plaintiff Exhart performed all conditions and obligations required of it under the Agreement.

66. Defendant Rite Aid on the other hand has materially breached the Agreement by reintroducing to the market butterfly yard stakes that infringe upon at least U.S. Patent No. D464,685 and the ‘225 registration.

67. As a direct and proximate result of Defendant Rite Aid’s breach of the Agreement, Plaintiff Exhart has been damaged in an amount equal to its expenses incurred in negotiating the Agreement, expenses incurred in monitoring Rite Aid’s compliance, or lack thereof, with the same, as well as its attorneys’ fees and costs in enforcing the Agreement, such fees and expenses being

1 recoverable pursuant to the express contractual language of the Agreement. The
2 exact amount of said costs and fees to be determined according to proof at trial.

3
4 **PRAYER FOR RELIEF**

5
6 WHEREFORE, Plaintiff Exhart prays for judgment against Defendant Rite
7 Aid, as follows:

8
9 **AS TO THE FIRST CAUSE OF ACTION**
10 **(For Trade Dress Infringement as Against Rite Aid and Does 1-9)**

11
12 1. For a preliminary and permanent injunction enjoining Defendant Rite
13 Aid and Does 1-9, and each of them, their respective officers, directors,
14 employees, agents, subsidiaries, distributors, dealers, and all persons in active
15 concert or participation with any of them:

- 16 a. From using the WINDY WINGS butterfly trade dress,
17 colorable imitations thereof, or trade dress confusingly similar
18 thereto, or likely to cause dilution of the distinctiveness of the above-
19 referenced trade dress, or injury to Plaintiff Exhart's reputation;
20 b. From representing by any means whatsoever, directly or
21 indirectly, that Defendant Rite Aid, or any products offered by
22 Defendant, are associated in any way with Plaintiff Exhart and its
23 products, and from otherwise taking any action likely to cause
24 confusion, mistake, or deception on the part of consumers; and
25 c. From taking any action likely to cause confusion or mistake in
26 the mind of the public or to otherwise cause consumers to believe that
27 Defendant Rite Aid is somehow sponsored by, underwritten, owned,
28 or affiliated with Plaintiff Exhart, and from otherwise

1 misappropriating the hard-earned goodwill that rightfully belongs to
2 Exhart.

3
4 2. For an award of money damages to compensate for Defendant's past
5 trade dress infringement.

6
7 3. For an award of exemplary damages for Defendant's willful and
8 intentional acts.

9
10 4. For Plaintiff's attorneys' fees and costs pursuant to 15 U.S.C. §
11 1117(a).

12
13 5. For an order seizing and impounding the accused products.

14
15 6. For such other and further relief as the Court may deem just and
16 proper.

17
18 **AS TO THE SECOND CAUSE OF ACTION**
19 **(For Design Patent Infringement)**

20
21 7. For a preliminary and permanent injunction enjoining Defendant Rite
22 Aid and Does 1-9, and each of them, their respective officers, directors,
23 employees, agents, subsidiaries, distributors, dealers, and all persons in active
24 concert or participation with any of them from making, using, importing, offering
25 to sell and selling the accused products.

26
27 8. For an order requiring Defendant Rite Aid and Does 1-9, and each of
28 them, pursuant to 35 U.S.C. §289, to account to Plaintiff for all revenue and

1 profits derived by Defendants and each of them from the manufacture, use,
2 importation, offering for sale and sale of the accused products.

3
4 9. For an award of Defendants' profits pursuant to 35 U.S.C. § 289 in
5 an amount to be proven a trial, and for prejudgment and post-judgment interest
6 until the award is fully paid.

7
8 10. For a judgment that Defendants have willfully and deliberately
9 infringed Plaintiff's patent rights, and that this is an exceptional case entitling
10 Plaintiff to enhanced damages.

11
12 11. For Plaintiff Exhart's fees and costs of suit pursuant to 35 U.S.C.
13 §285.

14
15 12. For an order seizing and impounding the accused products; and

16
17 13. For such other and further relief as this Court may deem just and
18 proper.

19
20 **AS TO THE THIRD CAUSE OF ACTION**
21 **(For Copyright Infringement)**
22

23 14. For a preliminary and permanent injunction enjoining Defendant Rite
24 Aid and Does 1-9, and each of them, their respective officers, directors,
25 employees, agents, subsidiaries, distributors, dealers, and all persons in active
26 concert or participation with any of them from making, using, importing, offering
27 to sell and selling the accused products.
28

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1 15. For an order requiring Defendant Rite Aid to account to Plaintiff
2 Exhart for all profits derived by Rite Aid from the manufacture, importation,
3 advertisement, distribution, public display, and sale of the accused products
4 and/or for statutory damages based upon Rite Aid's acts of copyright infringement
5 pursuant to 17 U.S.C. § 504(c), at Exhart's election.

6
7 16. For a judgment that Defendant Rite Aid has willfully and deliberately
8 infringed Plaintiff Exhart's rights, such that Exhart is entitled to enhanced
9 statutory damages pursuant to 17 U.S.C. § 504(c), if elected.

10
11 17. For Plaintiff Exhart's attorney's fees and costs of suit pursuant to 35
12 U.S.C. §285.

13
14 18. For an order seizing and impounding the accused products.

15
16 19. For such other and further relief as this Court may deem just and
17 equitable under the circumstances.

18
19 **AS TO THE FOURTH CAUSE OF ACTION**
20 **(For Common Law Trademark Infringement and Unfair Competition Under**
21 **California's Cal. Bus. & Prof. Code §§ 17200 and 17203)**

22
23 20. For a preliminary and permanent injunction enjoining Defendant Rite
24 Aid and Does 1-9, and each of them, their respective officers, directors,
25 employees, agents, subsidiaries, distributors, dealers, and all persons in active
26 concert or participation with any of them from making, using, importing, offering
27 to sell and selling the accused products.

1 21. For such other and further relief as this Court may deem just and
2 proper under the circumstances.

3
4 **AS TO THE FIFTH CAUSE OF ACTION**
5 **(For Breach of the Agreement, as against Rite Aid)**

6
7 22. For monetary damages in an amount subject to proof at trial.

8
9 23. For pre and post judgment interest on the same.

10
11 24. For reimbursement of all expenses incurred in negotiating and
12 monitoring compliance with the Agreement.

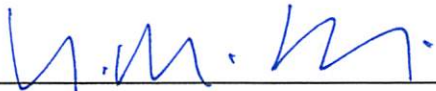
13
14 25. For attorneys' fees and costs of suit pursuant to the express terms of
15 the Agreement.

16
17 26. For such other and further relief as the Court may deem just and
18 proper.

19
20 Respectfully submitted:

21 CISLO & THOMAS LLP

22
23 Dated: April 6, 2017



24 Daniel M. Cislo, Esq.
25 David B. Sandelands, Esq.
26 Attorneys for Plaintiff,
27 EXHART ENVIRONMENTAL
28 SYSTEMS, INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised by the Complaint that are so triable.

Respectfully submitted:

CISLO & THOMAS LLP

Dated: April 6, 2017



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David B. Sandelands
Attorneys for Plaintiff,
EXHART ENVIRONMENTAL
SYSTEMS, INC.

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